

OWEN COUNTY BOARD OF ZONING APPEALS

RULES OF PROCEDURE

Article 1 – Powers and Duties

1.01 Source of Powers and Duties

The Board shall have the general powers and duties set forth in the Indiana Code and in the Owen County Zoning Ordinance.

1.02 Appeals

The Board shall hear and determine appeals from and review any order, requirement, decision or determination made by the Plan Director, a staff member or administrative officer, board or committee designated by the Zoning Ordinance, other than the Plan Commission, made in the enforcement of the Zoning Ordinance or the issuance of permits required by the Zoning Ordinance. The Board may reverse or affirm, wholly or partially, or may modify any order, requirement, decision or determination appealed from as in its opinion ought to be done in the premises and to that end shall have all the powers vested in the person or board from whom the appeal is taken. Reversal or modification must rest upon a finding by the Board that the initial order, requirement, decision or determination was improper as a matter of law or fact.

1.03 Special Exceptions

The Board shall hear, and approve or deny, special exceptions to the Zoning Ordinance but only in the classes of cases and in accordance with the criteria specified in the Zoning Ordinance. The Board may impose reasonable conditions as a part of its approval.

1.04 Variances

With respect to its power to grant variances, the Board shall determine whether a variance application is for a variance of use or for a variance from the development standards of the Zoning Ordinance. The Board may impose reasonable conditions as a part of its approval. For purposes of making such a determination, the Board shall apply the following criteria:

- A. A “use variance” is a variance permitting a use other than that permitted in a particular district by Zoning Ordinance.
- B. A “development standards variance” (aka, a design standards variance) is a

variance permitting a physical change in the condition of real property that would not otherwise be permitted by the Zoning Ordinance, including without limitation, the design, scope, number, or location of structures or other improvements to real property (e.g., height, bulk, area, density, setbacks, buildable area, etc.).

1.04 Commitments

In the case of a petition for a variance, conditional use or special exception from the terms of the Zoning Ordinance, the Board may permit or require the owner of the affected parcel to make a written commitment concerning the use or development of the affected parcel.

- A. Commitments shall be recorded in the Owen County Recorder's Office and shall take effect upon the granting of the exception, use or variance. Unless modified or terminated by the Board, a commitment is binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel.
- B. A commitment is binding on the owner of the parcel even if it is unrecorded; however, an unrecorded commitment is binding on a subsequent owner or other person acquiring an interest in the parcel only if that subsequent owner or other person had actual notice of the commitment. C. A commitment may be modified or terminated only by the Board at a public hearing after notice as provided by rule.
- D. By permitting or requiring commitments, the Board does not become obligated to approve or deny any request.
- E. Conditions imposed on the granting of an exception, use or variance are not subject to the rules applicable to commitments.
- F. The rules applicable to commitments do not affect the validity of any covenant, easement, equitable servitude, or other land use restriction created in accordance with law.

Article 2 - Members

2.01 Membership

The Board shall consist of five citizen members as follows:

- A. Three citizen members appointed by the Board of County Commissioners. One of the Board of Commissioners' appointees must be a member of the Plan Commission. The two other appointees may not be members of the Plan Commission.

- B. One citizen member appointed by the County Council. The County Council appointee may not be a member of the Plan Commission.
- C. One citizen member appointed by the Plan Commission. The Plan Commission appointee must be a member of the Plan Commission other than the member appointed by the County Commissioners.

Each appointing authority may appoint an alternate citizen member to act during the absence or disability of a regular appointee of the authority.

2.02 Qualifications

The members of the Board may not hold other elective or appointive offices in municipal, county, or state government, except as permitted by Section 2 of this chapter. A member must be a resident of the County Planning Jurisdictional Area.

2.03 Terms of Office

Members shall be appointed for a term of four years which term expires on the first Monday of January of the fourth year after the member's appointment. A member may serve until his successor is appointed and qualified. A member may be reappointed.

2.04 Removal of Member

The appointing authority may remove a member from the Board for cause. The appointing authority must mail notice of the removal, along with written reasons for the removal, to the member at their residence address. A member who is removed may, within thirty (30) days after receiving notice of the removal, appeal the removal to the Owen Circuit Court.

2.05 Vacated Membership

If a vacancy occurs among the members of the Board, the appointing authority shall appoint a member for the unexpired term of the vacating member.

2.06 Conflict of Interest

A member of the Board may not participate in a hearing or decision of the Board concerning a zoning matter in which he has a direct or indirect financial interest. The Board shall enter in its records the fact that a regular member has such a disqualification

and the name of the alternate member, if any, who participates in the hearing or decision in place of the regular member.

2.07 President and Vice President

At the first Board meeting of each year, the Board shall elect a president and vice president from its members. The vice president shall act as president during the absence or disability of the president.

2.08 Secretary

The Board may appoint a secretary and such employees as are necessary for the discharge of its duties, subject to County Council appropriation.

Article 3 - Meetings

3.01 Time, Place of Public Hearings

Regular sessions of the Board designated as public hearings shall be held the third Thursday of each month, at 7:00 p.m., at the Owen County Courthouse, Commissioners Room, Second Floor. If the third Thursday is a County recognized holiday, the hearing shall be held on a different date published in the Board's adopted meeting schedule.

3.02 Applicability

These Rules apply to all meetings (including public hearings) required by state law, the Zoning Ordinance, the Subdivision Control Ordinance, or to any other special or regular meetings of the Board.

3.03 Meetings Open to Public

Except for executive sessions as permitted by law, all regular and special meetings of the Board shall be open to the public in compliance with the Indiana Open Door Law, Indiana Code 5-14-1-1.5-1 et. seq.

3.04 General Rules

- A. No action is official unless authorized by a majority of the entire membership of the Board at a properly called meeting.
- B. All meetings at which official action is taken shall be open to the general public.
- C. An agenda shall list all items to be considered by the Board at a regular or special meeting.
- D. An agenda shall be distributed to members of the Board in a manner acceptable to them at least three (3) days before any regular meeting. The agenda shall be available for public inspection at the Building and Mapping Department at least two days before any regular meeting.

3.05 Quorum and Voting

- A. A quorum is a majority of the entire membership of the Board.
- B. Voting shall be by voice or by a show of hands, unless an alternative method is deemed appropriate by the Board.
- C. A record of the vote shall be kept in the minutes.

3.06 Regular Meetings

- A. The Board shall conduct its regular meetings according to a yearly schedule adopted no later than the last meeting of the previous year.
- B. If it is impossible to conduct a meeting at its regularly scheduled time, the President may set an alternative time, date, or place. The President may also cancel the meeting upon unanimous consent of the Board in compliance with Indiana Code 5-14-1.5.
- C. The order of business at a regular meeting shall be established by the Board. Generally, the format for the order of business is as follows:

- Call to Order
- Pledge of Allegiance
- Roll Call / Public Sign-In
- Approval of Minutes
- Old Business
- New Business
- Petitions

Appeals
Public Comment
Staff Reports
BZA Member Comments
Adjournment

3.07 Public Hearings and Notice

- A. The Board may conduct a public hearing as part of any meeting, or at any other place or time if proper notice is given.
- B. In addition to those required by law, the Board may hold public hearings when it decides that hearings will be in the public interest.
- C. Notice of public hearings shall comply with Indiana Code 5-3-1.
- D. If the Secretary determines that the application meets all requirements for Submission, a date shall be set for its public hearing. Notice by publication and additional written notice shall be made as follows:
 - 1. Notice by Publication. The Secretary shall publish a notice one time at least ten (10) days prior to the public hearing in a newspaper of general circulation in Owen County. The notice shall contain the following information:
 - a. Date and place of the meeting.
 - b. Name of the applicant.
 - c. Reason for the public hearing.
 - d. Name of Township; and Section, Township, and Range numbers.
 - e. Key and Parcel Number
 - f. That the proposal is on file and available for inspection at the Building and Mapping Department.
 - g. The general location of the property described in the application.
 - h. That comments regarding the proposal may be made in writing and filed with the Building and Mapping Department.
 - i. The comments must be received prior to the public hearing in order to be considered by the Board.

2. Additional Written Notice. Upon a form acceptable to the Board, the applicant shall provide additional written notice by first class mail at least ten (10) calendar days prior to the public hearing. The persons so notified shall be the owners of all adjoining parcels of land in Owen County to a depth of two ownerships within six hundred sixty (660) feet of the perimeter of the subject property except as qualified in these Rules. The owners' name and mailing address are determined according to the most recent bound volumes of the real estate tax assessment list on file in the office of the County Assessor.
 - a. For purposes of giving notice as required by this section, the land described in the application shall be deemed to include any adjoining or adjacent land owned by the applicant, with the exception however, that if the applicant is a railway, or other utility, the land described in the application shall not be deemed to include the entire right-of-way, but shall be limited to the particular parcel involved.
 - b. Any land separated from land described in the application by streets, alleys, easements, channel waters, or any other natural or artificial barrier, shall be deemed to be adjoining or adjacent to that described in the application. If the property described in the application abuts or includes a county line, the applicant shall secure the names and addresses of property owners from the appropriate county office.
 - c. The written notice shall include the following information:
 - i. The general location of the property and a general description of the land as stated in the application.
 - ii. That the proposal is on file and may be examined at the office of the Building and Mapping Department.
 - iii. That the addressee may file written comments concerning the proposal with the Building and Mapping Department. The comments must be received prior to the public hearing in order to be considered by the Board.
3. Affidavit of Written Notice
 - a. The applicant shall furnish evidence of compliance with Section 1.07(D) (2) of these Rules by filing an affidavit with the Secretary at least ten (10) days prior to the public hearing. If the tenth day should fall on a weekend or legal holiday, the affidavit may be filed the first day following which is not a weekend day or legal holiday.

- b. The affidavit shall list the owners of all parcels of ground within the notification boundary to whom notice was sent.
4. Purpose of Written Notice. Written notice is not required by state law. It serves to supplement the legally required public notice for persons in the vicinity of a proposal before the Board. Written notice shall be considered helpful in disseminating information, but not necessary to meet legally required public notice. Having complied with the provisions of Section 1.07(D) (2) and (3) of these Rules, the applicant shall be considered to have met the intent of written notice and adequate notice to have been served.

E. Supplemental Forms of Notice

1. The Board may authorize supplemental forms of notice deemed necessary by the Board to improve the dissemination of information regarding its activities.
2. These supplemental forms of notice are not required by law and shall be considered helpful in disseminating information but not necessary to meet legally required public notice.

3.08 Special Meetings

- A. Special meetings of the Board may be called by the President or by two members of the Board upon written request to the Secretary.
- B. The Secretary shall send a written notice fixing the time and place of the meeting to all members at least three (3) days before the meeting.
- C. Written notice is not required if:
 1. The date, time, and place are fixed at a regular meeting; and
 2. All members are present at that regular meeting.
- D. The order of business shall be established by the Board.

Article 4 - Application and Case Numbers

4.01 Applications

- A. Application shall be made on forms provided at the Building and Mapping Department.
- B. The applicant shall meet all the application submission requirements of the Zoning Ordinance. Staff may require additional information if the proposal warrants it.
- C. The Secretary shall review the application and determine whether or not it is complete and accurate. If complete and accurate, the Secretary shall set a date for the application's hearing. If not complete and/or accurate, the Secretary may return the application to the applicant and not set a date for the application's hearing.
- D. All application fees are due at the time of application and are not refundable once a hearing date for the application is set.
- E. The deadline for filing an application is 3:30 p.m. on the date established as a filing deadline on the Board's hearing schedule.
- F. The Secretary may limit the number of proposals to be heard at a regularly scheduled meeting if adjournment at a reasonable time would not be possible otherwise. The President shall be informed when this occurs. Those proposals not scheduled may be heard at a special meeting.

4.02 Case Numbers

- A. Each case heard by the Board shall have a case number assigned to it.
- B. The case number shall be in a form established by the Board.

Article 5 - Conduct of Hearings

5.01 Conduct

- A. Discourteous, disorderly, or contemptuous conduct shall be regarded as a breach of courtesy.

- B. The President shall preserve order and may warn any person present that particular conduct is a breach of courtesy. If a Board member persists in this conduct following a warning, the Board may vote to censure the offending member. If any other person persists in this conduct following a warning, the President may order that person expelled from the meeting.
- C. Every person appearing before the Board shall abide by the directions of the President.
- D. The President shall determine the admissibility of any evidence.

5.02 Presentations

A. Applicant

- 1. The applicant or the applicant's representative must appear before the Board for the case to be heard.
- 2. The applicant shall first present the facts and arguments in support of the case.
- 3. The burden shall be on the applicant to supply all information necessary for a clear understanding of the proposal.
- 4. Information to be displayed to the Board shall be in an electronic format suitable for video projection on the Board's projection system.
- 5. The Board and staff may interject during the applicant's presentation with comments or questions.

B. Public Comments

- 1. Following the applicant's presentation, comments from the public shall be taken.
- 2. Any person may appear in person or by representative to participate in a discussion of an item before the Board.
- 3. Any person wishing to speak must register with the Secretary and state their name and address.
- 4. Comments shall be directed to the Board and not to the applicant or any other person.
- 5. The Board and staff may query any person speaking to clarify that person's position.

C. Rebuttal

1. The applicant shall have time for rebuttal and to answer questions raised by the public.
2. The applicant shall direct comments to the Board and not to any person.

D. Public Portion of the Hearing Closed

1. Once all testimony is taken, the public portion of the hearing is closed.
2. No further testimony will be taken once the public portion of the hearing is closed.
3. After the public portion of a hearing is closed, the Board may address questions or comments to the applicant or other persons if, in the Board's opinion, the information is necessary to make an informed decision.
4. The Board may discuss the proposal with staff or among its members for any length of time deemed necessary.

E. Conclusion of the Public Hearing. The President shall conclude the public hearing and call for a motion on the item before the Board.

5.03 Time Limits

A. Discussion of any item shall be limited as follows:

1. The applicant shall have fifteen (15) minutes to present their case.
2. Remonstrators and those in support shall have three (3) minutes per person for the presentation of evidence in opposition or support. Persons speaking for a group of four (4) or more individuals shall have ten (10) minutes for their presentation.
3. The applicant shall then have five (5) minutes for rebuttal and to answer questions raised by the public.

B. No limit shall be placed on the amount of time the Board takes to discuss a proposal.

C. The Board may grant additional time for discussion if it deems it necessary to make an informed decision. The additional time should be allocated equally between the applicant and the public.

5.04 Continuance

A. The Board may continue the hearing of any case subject to the following provisions:

1. Applicant. The applicant may request and be granted a continuance if the Board deems it necessary to make an informed decision.
2. The Board. The Board may on its own continue any item from one meeting to another.
3. Staff. Staff may recommend continuance of any item, subject to Board approval.

B. Procedure for applicant-initiated continuances

1. An applicant may request a continuance directly from the Board at a public hearing.
2. Unless expressly authorized otherwise by the Board, the continuance shall be until the next regularly scheduled hearing of the Board.
3. Maximum number and total time of applicant-initiated continuances
 - a. The maximum number of applicant-initiated continuances granted any particular agenda item shall be limited to three (3).
 - b. In no case shall a particular agenda item be continued by an applicant more than ninety (90) days total time.
 - c. The Board may agree to applicant-initiated continuances in excess of the maximum number permitted, or for more than the total time permitted, or both, if the Board finds that unusual circumstances warrant it.

C. Dismissal of Continued Items

1. Any agenda item that is unable to proceed to hearing and which has already received the maximum number of continuances, and which has not received a further continuance may have that item dismissed by affirmative vote of the Board.
2. Any agenda item that is unable to proceed to hearing and which has already been continued the maximum number of days and which has not received a further continuance may have that item dismissed by affirmative vote of the Board.
3. A dismissal by the Board does not constitute a denial of the agenda item.

4. Any item dismissed under Section 3.04 D.1. or 3.04 D.2. of these Rules shall be eligible for rehearing as a new case with a new case number only after a new application is submitted and all applicable fees have been paid.

D. **Withdrawal or Denial of Continued Items.** Nothing in these Rules prevents the Board from accepting a withdrawal of, or denying, an agenda item subject to Section 3.04 in lieu of a dismissal if the Board deems it appropriate under the circumstances.

E. **Re-Notification**

1. For any continuance, the Board may require re-notification of property owners within the written notification boundary established under these Rules if doing so serves the public interest.
2. Any continuance granted for more than sixty (60) days shall require re-notification of property owners within the written notification boundary established under these Rules.

5.05 Hearing Limited to a Reasonable Length of Time

The Board may cease hearing new cases after 10:30 p.m. Cases not heard shall be placed at the beginning of the agenda of the next regular session of the Board.

Article 6 - Final Disposition of Cases

6.01 Action by the Board

- A. **Variances of the Development Standards, Special Exceptions and Appeals.** Action by the Board shall be in the form of an approval or denial. The proposal may be voted on as submitted or as modified by the Board. Modifications to the proposal as submitted shall be made part of the motion.
- B. **Committee Reports, Staff Reports, and Staff Recommendations.** Action by the Board shall take an appropriate form:
 1. Vote to approve or deny.
 2. Establish a sense of the Board.
 3. Take information without any action.

C. Adverse Decisions

1. Board Decision. An application receiving a denial from the Board shall not be heard again until six (6) months after the date of the decision by the Board.
2. A proposal that is subject to an adverse decision may be considered for hearing before six (6) months if it is substantially changed from the original. Before the proposal can be placed again on the docket, the Board shall determine if a change sufficient enough to warrant hearing before six (6) months has been made to the proposal.

6.02 Findings of Fact

All decisions of the Board on all matters within its jurisdiction and authority shall be committed to writing and shall be supported by written specific findings of fact on each material element pertaining to the matter under consideration.

6.03 Dismissal

- A. The Board may dismiss a case for lack of representation or lack of jurisdiction when an applicant fails to appear at two consecutive meetings.
- B. A case so dismissed shall not be heard again until six (6) months after the date of the decision by the Board.
- C. A proposal so dismissed may be considered for hearing before six (6) months if it is substantially changed from the original. To qualify for a hearing before six (6) months, the Board shall determine if a change sufficient enough to warrant hearing before six (6) months has been made to the proposal.

6.04 Withdrawal

- A. An applicant may withdraw a case by requesting it in writing no less than five (5) days prior to the hearing. A withdrawal so made shall be removed from the Board agenda by the Secretary. The President shall be notified of the withdrawal prior to the hearing.
- B. An applicant may appear at a hearing and request the case be withdrawn.
- C. An applicant may not withdraw a case after a vote has been ordered by the President.

- D. A case that is withdrawn shall not be heard again until three (3) months after the date of the decision by the Board.
- E. A proposal that is withdrawn may be considered for hearing before three (3) months if it is substantially changed from the original. Before the withdrawn proposal can be placed again on the docket, the Board shall determine if a change sufficient enough to warrant hearing before three (3) months has been made to the proposal.

Article 7 - Miscellaneous

7.01 Amendments and Suspension of Rules

- A. Amendments to these Rules may be made by the Board at any regular or special meetings upon the affirmative vote of at least three Board members.
- B. The suspension of any rule may be ordered at any meeting by an affirmative vote of at least three Board members.

7.02 Appeals to the Board

- A. An appeal to the Board shall be filed within fourteen (14) days of the date of the act or decision under appeal.
- B. An appeal shall be filed in a form prescribed by the Board.

7.03 Conflict with Zoning Ordinance

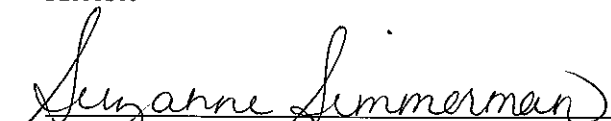
For any conflict between the Owen County Zoning Ordinance and these Rules of Procedure, the Owen County Zoning Ordinance shall govern.

These Rules of Procedure of the Owen County Board of Zoning Appeals, was approved by the affirmative vote of a majority of the members of the Board at the regular meeting of the Board held on the 16th day of February, 2023. This approval also repeals any prior Rules of Procedure.

Signed:


Norman Warner, President

Attest:


Suzanne Simmerman, Secretary